

**Department of Health & Human Services  
Public Health Service  
Bemidji Area Indian Health Service  
Bemidji, Minnesota**

**Refer to: IHM**

Bemidji Area Indian Health Service Circular NO. 01-05

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**Bemidji Area Policy on Personal Services Contract**

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**1. PURPOSE**

The purpose of this circular is to establish a policy and define the procedures for acquisition of personal services contracting in the Bemidji Area Office Indian Health Service (BAOIHS).

**2. POLICY**

Indian Health Service Circular No. 95-13 authorizes the Indian Health Service to enter into personal services contracts. It is the policy of the Bemidji Area Indian Health Service that when in-house sources are insufficient to support the mission of the IHS, personal services contracts authorized by the administrative provisions of Public Law 103-332 may be executed.

IHS has authority to use personal service contracts for the provision of ALL services necessary to carry out the IHS' statutory requirements, except for those functions that must be carried out by Federal employees because they are inherently Federal responsibilities.

Services are to be obtained in the most cost-effective manner, without barriers to full and open competition, and free of any potential conflicts of interest.

Contracting Officers shall ensure that contracts for individuals providing services that involve regular contact with, or control over Indian children include requirement for criminal history background checks prior to providing unmonitored contact with Indian children.

**3. APPLICABILITY AND SCOPE**

- A. This policy applies to contracts awarded for personal services with entities, either individuals or organizations, for the provision of services in facilities owned, operated, or being constructed under the jurisdiction of the IHS.
- B. A personal services contract is characterized by the employee-employer relationship. In other words, the Federal Government exercises day-to-day control and supervision over an individual under a personal services contract:

- C. It is the purpose of personal services contracts to:
- (i) facilitate accomplishment of the IHS mission;
  - (ii) maximize beneficiary access to IHS facilities;
  - (iii) enhance quality of care by promoting the continuity of the patient/provider relationship; and
  - (iv) ensure adequate services for facilities under construction.

#### **4. DEFINITION**

**Personal Service Contract** A contract that, by its express terms or as administered makes the contractor personnel appear, in effect, Government employees [FAR 37.101].

#### **5. REQUIREMENTS**

- A. Personal services contracts are appropriate for use:
- (i) when qualified career employees cannot be hired;
  - (ii) during times of increased cyclical or seasonal workload;
  - (iii) when the workload is variable or does not conform to the standard workweek;
  - (iv) during the extended absence of an IHS employee;
  - (v) to accomplish a project or function that has limited or reimbursable funds, e.g., Medicare, Medicaid, private insurance, and research grants. This authority may also be used during a transitional period when contracting of a particular function is anticipated.
- B. Personal services contracts should not be used to displace current permanent career employees.
- C. So far as may be practicable, Contracting Officers should ensure that the Buy Indian Act authority is utilized to the maximum extent possible when awarding personal services contracts.
- D. Personal services contracts shall be subject to the same quality assurance, credentials, licensure, and other qualifications standards as those required of IHS personnel. In addition, health care providers, other than paraprofessionals, must be licensed in a State, the District of Columbia, Puerto Rico, or a Territory of the United States to perform the contract services within IHS facilities.
- E. Pursuant to Public Law 103-226, the Federal Workforce Restructuring Act of 1994, an employee who has received a voluntary separation incentive payment and enters into a personal service contract within 5 years after the date of separation shall be required to repay to the Agency the entire amount of the incentive payment.
- F. Individuals providing services as categorized in Exhibit A, the duties and responsibilities of which involve regular contact with, or control over, Indian children, are subject to a character investigation. The IHS personnel offices will conduct these investigations following the award of a personal services contract unless in the judgement of the Contracting Officer, in consultation with the Personnel Officer, investigation may be waived based on prior investigations on file. **Until the character investigation has been completed and the contracting officer notified, such individuals shall not have unsupervised contact with Indian children.**

In addition to the form entitled, "Temporary Waiver of Character Investigation" the following forms are to be completed and returned **prior** to beginning performance under the contract:

- P.L. 101-630 Declaration of Federal Employment
- SF-306 Declaration for Federal Employment
- SF-85 Questionnaire for Non-Sensitive Positions
- FD-258 Fingerprint Charts

\*See Section 7b and 7c Direct Site Monitor and Attachment B Guidance for Completing Background Investigations on Contractors who will have contact with Indian Children in IHS Facilities P.L. 101-630 and P.L. 101-647

- G. Federal Tort Claims Act coverage for medical related claims is extended to personal services contractors only when an incident of negligence is alleged to have occurred during the delivery of services by a contracted health care provider in a facility owned, operated, or constructed under the jurisdiction of the IHS. The services provided must have been within the scope of the personal services contract. If acting outside the Scope of Work, the contractor is not covered under the Federal Tort Claim.
- H. Utilizing personal service contracts for physician services is not in the Indian Health Services' best interest. The high degree of relatively continuous supervision and control that must be exercised over contract physicians to satisfy the strict legal requirements set by federal courts and the Federal Acquisition Regulations can not be maintained by Government supervisors on a day-to-day basis. Utilizing personal service contracts to procure for the services of physicians will expose the IHS to unnecessary contractual and legal risk that can be avoided by negotiating a "Nonpersonal Service Contract" as defined in FAR 37.4

## **6. PROCEDURES:**

- A. **Award and Administration of Personal Services Contracts** Contracts entered into for personal services shall be awarded and administered pursuant to the provisions of FAR Part 37, Health and Human Services Acquisition Regulations (HHSAR) Part 337, and IHS supplementary contracting provisions.
- B. **Accountability** In establishing effective lines of authority and accountability, IHS supervisors may direct the activities of personal services contractors on the same basis as IHS employees. Each contract must contain language that indicates the contractor acknowledges that the performance of individuals under the contract is subject to the supervision and direction of a designated Government officer or employee.

Further, the contract shall contain a description of the monitoring and record keeping procedures used to ensure contract compliance and proper payment. These procedures must be able to demonstrate through time and attendance logs, minutes of meetings, sign-in/sign-out sheets, or other appropriate records that services called for under the contract have been rendered. This description shall also identify the Government official (by title) responsible for verifying contract compliance.

- C. **Posting and Synopsis Requirements** Acquisitions for personal services contracts may be exempt from the posting and synopsis requirements of FAR Part 5, provided the Contracting Officer provides adequate advance notice of contracting opportunities to individuals and organizations residing in the geographic vicinity where the services are to be performed.

Applicants shall be solicited through at least one publication that serves the geographic vicinity of the health facility. The notice must include the qualification criteria against which individuals responding will be evaluated.

- D. **Evaluating and Ranking** The Contracting Officer shall provide the qualifications of individuals responding to the notice to the program office for evaluation and ranking. Individuals must be considered solely on the basis of the professional qualifications established for the particular personal service being acquired and the Government's estimate of reasonable rates, fees, or other costs. The program office shall provide the Contracting Officer with written rationale for the ranking of individuals consistent with the required qualifications.

- E. **Pricing Service Contracts** The Government is entitled to receive quality service at a fair price when it contracts to procure services with a contractor. The variable influencing competition may result in higher prices due to the geographic location, type of service, expertise or skill required.

The contractor must propose a contract price. The price should be comparable to salaries of other prospective contractors with the same experience and qualifications in the same geographic area. The price should include the amount paid in federal, state, and local taxes and the cost of any fringe benefit like life or health insurance. (Contracts are not necessarily awarded to the lowest bidder, IHS' objective is to get quality services at a reasonable price.)

It is advisable to propose a cost of living increase for each year of the contract.

- F. **Negotiations** Upon receipt of the program office evaluations, the Contracting Officer shall either:

- (1) Enter into negotiations with the highest ranked applicant. If a mutually satisfactory contract cannot be negotiated, negotiations shall be terminated with the highest ranked applicant and the Contracting Officer shall enter into negotiations with the next highest.
- (2) Enter into negotiations with all qualified applicants and select on the basis of qualifications and rates, fees, or other costs.

Only a delegated procurement official may enter into negotiations.

- G. **Cancellation of Requirements** If a fair and reasonable price cannot be obtained from a qualified individual, the requirement should be canceled and acquired using procedures other than those established for personal service contracts.

- H. **One Response to an Advertised Requirement** In the event only one individual responds to an advertised requirement, the Contracting Officer is authorized to enter into negotiations and award a contract. In this case, the individual must still meet the minimum qualifications of the requirement and the Contracting Officer must be able to make a determination that the price is fair and reasonable.

- I. **Compensation** The Contracting Officer shall make a written determination of the reasonableness of compensation to be provided under the contract, taking into consideration the relative importance of the duties to be performed, the stature of the individual in his/her specialized field, comparable pay positions under the Classification Act or other Federal pay systems, rates paid by private employers, and rates previously paid for similar work.

Personal services contractors shall be compensated only for periods of time actually devoted to the delivery of services required by the contract. The amount or rate of payment shall be determined on a case-by-case basis. The Contracting Officer may obtain advice from the Personnel Officer concerning equivalent rates for Federal hires.

Contractors may submit an invoice for payment every two weeks. The payment office has 30 days to issue payment. The first payment may take as long as a month and a half to receive but should come regularly every two weeks thereafter. It is strongly recommended that contractors sign up for electronic funds transfer.

- J. **Items to be included in Personal Service Contracts**

- An all-inclusive labor-hour rate for each type of personnel;
- Formulas for developing hourly rates for billing both straight time and overtime wages;
- Instructions for invoicing
- Funding limitations;
- Delineation of responsibility for handling proprietary information;
- Workman's compensation and insurance requirements;

- Record-keeping responsibilities;
- Duration of assignment;
- Provisions and clauses required by FAR;
- Certifications of immunizations for personnel working in direct health care facilities;
- The notice of contracting opportunities to potential contractors within the geographical vicinity.

- K. Acquisition Planning Documents** Informal AP Procedures are required for negotiated acquisitions below the Simplified Acquisition Threshold (SAT). Written APDs are required for acquisitions exceeding the SAT. The only services exempted from this requirement are A-E services, utility services, acquisitions from other governmental sources, and P.L. 93-638 non-constructions contracts. [HHSAR, IHM)
- L. Length of Contracts** Personal services contracts can be no longer than 5 years. They are written in increments called performance periods which normally correspond to the Government's fiscal year- October 1 through September 30.
- M. Performance Measurement** An IHS supervisor will review the contractors performance at least once every year. Generally speaking the contractor will be expected to perform at the same level (or higher) with respect to quality and productivity as other workers doing the same job at the same or similar facility.
- N. ARMS** – Requisitions (SF HHS-393) shall be completed on ARMS (Administrative Resources Management System) by the requestor/program.

The requisitioner shall check the requisition for the following:

- (i) Make sure the Specifications or Statements of Work are clear and concise.
- (ii) Make sure Technical Evaluation Factors are included.
- (iii) Check for Mathematical correctness.
- (iv) Verify that the individual who certifies funds available is properly authorized.
- (v) Proper funding codes (i.e., appropriate numbers, object class codes, CAN number).
- (vi) Vendor information including FIN, address, telephone/fax, contact person.

**Under no circumstances shall an individual begin working without a properly approved purchase order in their possession.** Your failure to assure that a purchase order has been processed will result in an unauthorized commitment, and there may be severe disciplinary ramifications for those who are responsible for unauthorized commitments.

## **7. RESPONSIBILITIES**

- A. Contracting and Procurement Officials** Indian Health Service Contracting Officers and Procurement Officials have been delegated the responsibility for soliciting, negotiating and awarding contracts. They are the only Government officials who can obligate the agency under contract. They also have the responsibility for selection of the contract type.

The Service Unit Procurement Official is responsible for completion of the Temporary Waiver of Character Investigation form, the Declaration for Federal Employment (P.L. 1001-630), Optional Form 306 (Declaration for Federal Employment), Standard Form 85 (Questionnaire for Non-Sensitive Positions, and the Standard Form 87 (Finger Print Form) and inclusion of these forms in the procurement file.

- B. Service Unit Director** The Service Unit Director (SUD) is responsible to ensure that direct sight monitoring is enforced. He/she must also identify the individuals responsible for direct sight monitoring of the contractor. The SUD must ensure that the direct sight monitor has completed a CNACI (Childcare Worker National Agency Check with Written Inquiries) and must require them to sign the waiver form. Several employees may sign the form if required. The SUD, Contractor, and Direct Sight Monitors must sign the waiver before the Contracting Officer signs the Purchase Order.

- C. Direct Sight Monitor Responsibilities of the Direct Sight Monitor shall include but are not limited to the following:
- (i) The Direct Sight Monitor shall be responsible for ensuring that the contractor will not have unmonitored contact with an Indian child.
  - (ii) The Direct Sight Monitor shall be responsible for monitoring the contractor at all times while the contractor is in regular contact with or has control over an Indian child in the Indian Health Service facility. This means that the contractor shall be within the sight of the Direct Sight Monitor.
  - (iii) If the situation should arise that the Direct Sight Monitor is called away or must leave the sight of the contractor while in the examination of a child, the Direct Sight Monitor may instruct the Contractor that they shall leave the room and not remain in contact with the child until another Direct Sight Monitor is assigned or they return.
- D. Personal Service Contract Personnel The Contractor is Responsible for completing and submitting forms required for the “CNACI” investigation and the temporary waiver does not excuse any failure or delay in completing the paperwork for the background investigation.

Kathleen Annette, M.D. \_\_\_\_\_  
Director Date  
Bemidji Area Indian Health Service